



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Bailey et al.

Art Unit: 2123

Application No. 09/883,838

CERTIFICATE OF MAILING

Filed: June 17, 2001

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service on May 23, 2003, as First Class Mail in an envelope addressed to: ATTENTION OFFICE OF PETITIONS, MAIL STOP PETITIONS, COMMISSIONER FOR PATENTS, PO BOX 1450, ALEXANDRIA, VA 22313-1450.

For: SYNCHRONIZATION OF MULTIPLE  
SIMULATION DOMAINS IN AN EDA  
SIMULATION ENVIRONMENT

Examiner: Unknown

Date: May 23, 2003

Attorney for Applicant

TRANSMITTAL LETTER

ATTENTION OFFICE OF PETITIONS  
MAIL STOP PETITIONS  
COMMISSIONER FOR PATENTS  
PO BOX 1450  
ALEXANDRIA, VA 22313-1450

Enclosed for filing in the application referenced above are the following:

- ☒ Communication Regarding Rescinded Nonpublication Request and Petition for Revival of Application if Necessary
- ☒ Copy of Power of Attorney by Assignee
- ☒ Notice of a Foreign or International Filing Under 35 U.S.C. 122(b)(2)(B)(iii)
- ☒ Petition for Revival of an Application for Patent Abandonment for Failure to Notify the Office of a Foreign or International Filing (37 CFR 1.137(f))
- ☒ Other than small entity – fee \$1,300.00 (37 C.F.R. 1.17(m))
- ☒ Please charge our Deposit Account No. 02-4550 in the amount of \$1,300.00 if necessary. Two copies of this sheet are enclosed.

RECEIVED

MAY 30 2003

☒ Please return the enclosed postcard to confirm that the items listed above have been received.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By 

David P. Petersen

Registration No. 28,106

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
Telephone: (503) 226-7391  
Facsimile: (503) 228-9446

cc: Docketing



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**COMMUNICATION REGARDING RESCINDED NONPUBLICATION REQUEST  
AND PETITION FOR REVIVAL OF APPLICATION IF NECESSARY**

Enclosed is a copy of the power of attorney from the Assignee of Record appointing the undersigned attorney.

This communication is being filed in response to the notification published in the Official Gazette on May 6, 2003, concerning the notice requirements of 35 U.S.C. 122. The Official Gazette notice reminded applicants that a request to rescind a nonpublication request is not itself a notice of foreign filing, and that an additional notice of foreign filing may be necessary in certain circumstances.

For the reasons discussed below, the Assignee of the above-referenced application believes that the notification requirements of 35 U.S.C. 122 have been fully met in this application.

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**OFFICE OF PETITIONS**

If the Patent and Trademark Office (the "PTO") determines that an additional notice of foreign filing was required for this application, however, the Assignee hereby requests the Commissioner to accept the enclosed Notice of a Foreign or International Filing and to find that the delay in submitting the notice was unintentional and that the application was never abandoned pursuant to the last phrase of 35 U.S.C. 122(b)(2)(B)(iii). In the alternative, the Assignee hereby requests the Commissioner to accept the enclosed Petition for Revival of the application as being unintentionally abandoned.

The Commissioner is authorized to charge any necessary fees to the deposit account identified below.

### **BACKGROUND**

This application was filed on June 17, 2001, with an accompanying request for nonpublication under 35 U.S.C. 122(b)(2)(B)(i). On May 30, 2002, the request for nonpublication was rescinded using the form authorized by the PTO (Form PTO/SB/36 (11-00)). A copy of this request and of the postcard from the PTO acknowledging the receipt of the request are enclosed as Exhibits A and B. On that same day, a corresponding PCT application was filed with the United States receiving office.

### **THE ASSIGNEE HAS COMPLIED WITH 35 U.S.C. 122**

The Assignee does not believe it was required to file a separate notification of foreign filing under 35 U.S.C. 122(b)(2)(B)(iii) because the rescission of the nonpublication request did not occur subsequent to the international filing. The Assignee's belief is derived from the plain and unambiguous language of 35 U.S.C. 122(b)(2)(B)(ii), which states that an applicant "may rescind a request [for nonpublication] . . . at any time." The plain meaning of the term "rescind" is "to make void; repeal or annul." *American Heritage Dictionary of the English Language, Fourth Edition*, pg. 1482 (2000). The legal effect of a "rescission" is not merely to terminate an obligation, "but to put an end to it as though it never were." *Black's Law Dictionary, Sixth Edition*, pg. 1306 (1990). Therefore, when the request to rescind the nonpublication request was filed, the application should have been treated as though the nonpublication request was never

filed. Consequently, the Assignee was never required to file an additional notice of foreign filing under 35 U.S.C. 122(b)(2)(B)(iii), which applies only to an applicant who has "made a request under clause (i) but who subsequently files [an application] in a foreign country or under a multilateral international agreement." The Assignee therefore submits that no additional notice of foreign filing was required in this application.

Even if the Commissioner determines that a separate notice of foreign filing was required, it is the Assignee's understanding that the PTO considers a request to rescind a nonpublication request as the proper notice of foreign filing. This understanding derives from the "Request to Rescind Previous Nonpublication Request, 35 U.S.C. 122(b)(2)(B)(ii)" form endorsed and distributed by the PTO in 2001. In particular, Form PTO/SB/36 (4-01), which is attached as Exhibit C, includes the following note: "Filing this rescission of a previous nonpublication request is considered the notice of a subsequent foreign or International filing required by 35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c) if this rescission is filed no later than forty-five days [sic] (45) days after the date of filing of such foreign or international application." The May 30, 2002, request to rescind the nonpublication request submitted in this application was nearly identical to Form PTO/SB/36 (4-01), but did not contain the note. The note, however, is not an affirmative statement by the signing party, but an explanation of how the PTO treats a request to rescind a nonpublication request. The Assignee therefore submits that the May 30, 2002, request to rescind the nonpublication request was a proper notice of a foreign or international filing under 35 U.S.C. 122(b)(2)(B)(iii).

**IF NOTICE UNDER 35 U.S.C. 122(b)(2)(B)(iii) WAS NECESSARY,  
THE APPLICATION IS NOT ABANDONED**

The Assignee was unaware of any potential problems with this application until sometime on or about May 6, 2003, when the relevant notice was published in the Office Gazette. Accordingly, any delay in filing a proper notice was unintentional. If it is determined that a notice of foreign filing was required under 35 U.S.C. 122(b)(2)(B)(iii), the Assignee hereby requests the Commissioner to accept the enclosed Notice of a Foreign or International Filing and to find that the application was never abandoned as the delay in providing the Notice was unintentional. The Commissioner may make such a finding under 35 U.S.C.

122(b)(2)(B)(iii), which provides that “[a] failure of the applicant to provide such notice within the prescribed period shall result in the application being regarded as abandoned, unless it is shown to the satisfaction of the Director that the delay in submitting the notice was unintentional.” The word “unless” in this subsection conveys the meaning that no abandonment occurs when the delay in providing the foreign filing notice was unintentional.

**IF THE APPLICATION IS ABANDONED,**  
**THE ASSIGNEE REQUESTS REVIVAL**

If it is determined that the application has become abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii), the Assignee hereby requests the Commissioner to accept the enclosed Petition for Revival under 37 C.F.R. 1.137(b), which includes the requisite notice of a foreign or international filing.

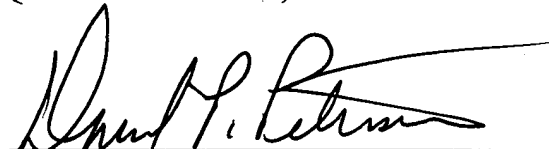
The Commissioner is hereby authorized to charge any fees that may be required in connection with this communication, including any petition fee to Account No. 02-4550. A copy of this communication is enclosed.

If any further information is required, or if the Commissioner has any questions in connection with this communication, the Commissioner is invited to call the undersigned.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

By



David P. Petersen  
Registration No. 28,106

One World Trade Center, Suite 1600  
121 S.W. Salmon Street  
Portland, Oregon 97204  
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Attorney for Applicant

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**NOTICE OF A FOREIGN OR INTERNATIONAL FILING  
UNDER 35 U.S.C. 122(b)(2)(B)(iii)**

Subsequent to the filing of the above-identified application, a request to rescind the nonpublication request was filed with a notice of foreign filing and an application was filed in another country, or under a multinational international treaty (e.g., filed under the Patent Cooperation Treaty), that requires publication of applications eighteen months after filing. The filing date of the subsequently-filed foreign or international application is May 30, 2002.

The entire delay in filing the notice of a foreign or international filing from any applicable due date for the required notice until the filing of this notice was unintentional.

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Page 1 of 2

MAY 30 2003

**OFFICE OF PETITIONS**

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PATENT

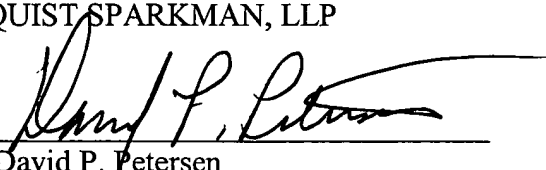
Attorney Reference Number 1011-64535  
Application Number 09/883,838

Please charge any fees that may be required in connection with filing of this Notice to  
Deposit Account 02-4550.

Respectfully submitted,

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